

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

CARL TYRONE LEWIS,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-08-71-R
)	
DAVID PARKER, Warden,)	
)	
Respondent.)	

ORDER

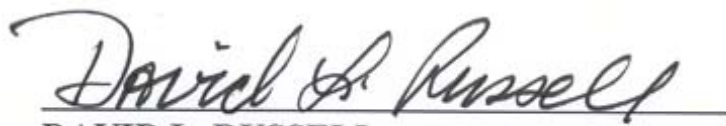
Before the Court are the Report and Recommendation of United States Magistrate Judge Doyle W. Argo entered September 26, 2008 [Doc. No. 19] and Petitioner's Objection to the Report and Recommendation filed October 7, 2008 [Doc. No. 20]. In his Objection, Petitioner does not object to any of the findings and conclusions of the Magistrate Judge in the Report and Recommendation. Rather, he states that he "has newly discovered evidence withheld by the State of Oklahoma and the Appellant's defense attorney that Defendant's constitutional right against double jeopardy was violated." Petitioner states that he discovered the holding of the Court of Criminal Appeals in *Lewis v. State*, 150 P.3d 1060 (Okla. Crim. App. 2006) while doing research at the law library of the institution where he is incarcerated. He contends that the violation of double jeopardy found by the Oklahoma Court of Criminal Appeals entitles him to "total relief" and he objects to the Report and Recommendation *in toto* on that basis.

The Magistrate Judge noted in a footnote that the Court of Criminal Appeals in *Lewis v. State*, 150 P.3d 1060, reversed Petitioner's conviction on the second count of trafficking

in illegal drugs (heroin) with instructions to dismiss that count. Report and Recommendation at p. 1, note 1. The reversal of that conviction and direction for the dismissal of count 2 were based upon the violation of double jeopardy found by the Oklahoma Court of Criminal Appeals and the remedy for that violation dictated by the Oklahoma Court of Criminal Appeals. Accordingly, Petitioner has received all of the relief to which he is entitled for the double jeopardy violation – reversal of the second conviction for the same offense. However, the Court observes that the district court docket sheet for *State v. Lewis*, Case No. CF-2000-725, viewed at www.oscn.net, does not reflect dismissal of count 2 after the mandate was ordered issued by the Oklahoma Court of Criminal Appeals following that Court's reversal of Petitioner's conviction on that count. The State of Oklahoma should ensure that the record reflects the dismissal of that count..

In accordance with the foregoing, the Report and Recommendation of the Magistrate Judge, to which no specific substantive objection is made by Petitioner, is ADOPTED in its entirety and the petition of Carl Tyrone Lewis for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DENIED.

IT IS SO ORDERED this 8th day of October, 2008.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE